

AMENDED IN ASSEMBLY APRIL 24, 2003

AMENDED IN ASSEMBLY APRIL 3, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1160

**Introduced by Assembly Member Steinberg
(Coauthor: Assembly Member Koretz)**

February 21, 2003

An act to amend Sections 65583, 65852.2, and 65915 of, and to add Section 65917.1 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, as amended, Steinberg. Housing: second units.

(1) The Planning and Zoning Law requires the housing element of the general plan of a city or county to include, among other things, a program with a 5-year schedule of actions that the local government is undertaking or intends to undertake to implement the goals and objectives of the housing element. The program is also required to provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right.

This bill would revise the definition of the phrase “use by right” as specified and state that the changes are declaratory of existing law.

(2) The Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of 2nd units on parcels zoned for a primary single-family and multifamily residence. When the local agency has not adopted an ordinance, it is required to grant a variance or special use permit for the creation of a 2nd unit that complies with statutory requirements but may require the applicant to be an

owner-occupant. Existing law specifies the floor area of a permitted 2nd unit and parking requirements.

This bill would provide that a local agency that has not adopted an ordinance may not require a variance or discretionary permit and shall approve an application for a 2nd unit that complies with the statutory requirements. The bill would provide that a local agency may not adopt an ordinance that requires an applicant or occupant of a 2nd unit or principal dwelling unit to be an owner-occupant or his or her dependent or a caregiver for the owner or dependent or that restricts the rent or income of occupants of 2nd units or that limits occupancy based on age as specified. The bill would revise the ~~floor area~~ *minimum and maximum unit size requirement* and the parking requirements for 2nd units.

(3) The Planning and Zoning Law also requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with incentives or concessions for the production of lower income housing units within the development if the developer meets certain requirements.

This bill would additionally require the city, county, or city and county to grant a requesting applicant a reduction in parking standards or requirements, *except* as specified, and would revise the definition of development standard. The bill would also provide, with respect to those incentives, that multifamily and single-family residential use is a permitted use on any parcel zoned and developed for primary or secondary education *and residential uses*. By increasing the duties of local public officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.



Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65583 of the Government Code is
2 amended to read:
3 65583. The housing element shall consist of an identification
4 and analysis of existing and projected housing needs and a
5 statement of goals, policies, quantified objectives, financial
6 resources, and scheduled programs for the preservation,
7 improvement, and development of housing. The housing element
8 shall identify adequate sites for housing, including rental housing,
9 factory-built housing, and mobilehomes, and shall make adequate
10 provision for the existing and projected needs of all economic
11 segments of the community. The element shall contain all of the
12 following:
13 (a) An assessment of housing needs and an inventory of
14 resources and constraints relevant to the meeting of these needs.
15 The assessment and inventory shall include all of the following:
16 (1) An analysis of population and employment trends and
17 documentation of projections and a quantification of the locality's
18 existing and projected housing needs for all income levels. These
19 existing and projected needs shall include the locality's share of the
20 regional housing need in accordance with Section 65584.
21 (2) An analysis and documentation of household
22 characteristics, including level of payment compared to ability to
23 pay, housing characteristics, including overcrowding, and housing
24 stock condition.
25 (3) An inventory of land suitable for residential development,
26 including vacant sites and sites having potential for
27 redevelopment, and an analysis of the relationship of zoning and
28 public facilities and services to these sites.
29 (4) An analysis of potential and actual governmental
30 constraints upon the maintenance, improvement, or development
31 of housing for all income levels and for persons with disabilities
32 as identified in the analysis pursuant to paragraph (6), including
33 land use controls, building codes and their enforcement, site
34 improvements, fees and other exactions required of developers,
35 and local processing and permit procedures. The analysis shall also

1 demonstrate local efforts to remove governmental constraints that
2 hinder the locality from meeting its share of the regional housing
3 need in accordance with Section 65584 and from meeting the need
4 for housing for persons with disabilities identified pursuant to
5 paragraph (6).

6 (5) An analysis of potential and actual nongovernmental
7 constraints upon the maintenance, improvement, or development
8 of housing for all income levels, including the availability of
9 financing, the price of land, and the cost of construction.

10 (6) An analysis of any special housing needs, such as those of
11 the elderly, persons with disabilities, large families, farmworkers,
12 families with female heads of households, and families and
13 persons in need of emergency shelter.

14 (7) An analysis of opportunities for energy conservation with
15 respect to residential development.

16 (8) An analysis of existing assisted housing developments that
17 are eligible to change from low-income housing uses during the
18 next 10 years due to termination of subsidy contracts, mortgage
19 prepayment, or expiration of restrictions on use. “Assisted
20 housing developments,” for the purpose of this section, shall mean
21 multifamily rental housing that receives governmental assistance
22 under federal programs listed in subdivision (a) of Section
23 65863.10, state and local multifamily revenue bond programs,
24 local redevelopment programs, the federal Community
25 Development Block Grant Program, or local in-lieu fees.
26 “Assisted housing developments” shall also include multifamily
27 rental units that were developed pursuant to a local inclusionary
28 housing program or used to qualify for a density bonus pursuant
29 to Section 65916.

30 (A) The analysis shall include a listing of each development by
31 project name and address, the type of governmental assistance
32 received, the earliest possible date of change from low-income use
33 and the total number of elderly and nonelderly units that could be
34 lost from the locality’s low-income housing stock in each year
35 during the 10-year period. For purposes of state and federally
36 funded projects, the analysis required by this subparagraph need
37 only contain information available on a statewide basis.

38 (B) The analysis shall estimate the total cost of producing new
39 rental housing that is comparable in size and rent levels, to replace
40 the units that could change from low-income use, and an estimated

1 cost of preserving the assisted housing developments. This cost
2 analysis for replacement housing may be done aggregately for
3 each five-year period and does not have to contain a
4 project-by-project cost estimate.

5 (C) The analysis shall identify public and private nonprofit
6 corporations known to the local government which have legal and
7 managerial capacity to acquire and manage these housing
8 developments.

9 (D) The analysis shall identify and consider the use of all
10 federal, state, and local financing and subsidy programs which can
11 be used to preserve, for lower income households, the assisted
12 housing developments, identified in this paragraph, including, but
13 not limited to, federal Community Development Block Grant
14 Program funds, tax increment funds received by a redevelopment
15 agency of the community, and administrative fees received by a
16 housing authority operating within the community. In considering
17 the use of these financing and subsidy programs, the analysis shall
18 identify the amounts of funds under each available program which
19 have not been legally obligated for other purposes and which could
20 be available for use in preserving assisted housing developments.

21 (b) (1) A statement of the community's goals, quantified
22 objectives, and policies relative to the maintenance, preservation,
23 improvement, and development of housing.

24 (2) It is recognized that the total housing needs identified
25 pursuant to subdivision (a) may exceed available resources and the
26 community's ability to satisfy this need within the content of the
27 general plan requirements outlined in Article 5 (commencing with
28 Section 65300). Under these circumstances, the quantified
29 objectives need not be identical to the total housing needs. The
30 quantified objectives shall establish the maximum number of
31 housing units by income category that can be constructed,
32 rehabilitated, and conserved over a five-year time period.

33 (c) A program which sets forth a five-year schedule of actions
34 the local government is undertaking or intends to undertake to
35 implement the policies and achieve the goals and objectives of the
36 housing element through the administration of land use and
37 development controls, provision of regulatory concessions and
38 incentives, and the utilization of appropriate federal and state
39 financing and subsidy programs when available and the utilization
40 of moneys in a low- and moderate-income housing fund of an



1 agency if the locality has established a redevelopment project area
2 pursuant to the Community Redevelopment Law (Division 24
3 (commencing with Section 33000) of the Health and Safety Code).
4 In order to make adequate provision for the housing needs of all
5 economic segments of the community, the program shall do all of
6 the following:

7 (1) (A) Identify adequate sites which will be made available
8 through appropriate zoning and development standards and with
9 services and facilities, including sewage collection and treatment,
10 domestic water supply, and septic tanks and wells, needed to
11 facilitate and encourage the development of a variety of types of
12 housing for all income levels, including multifamily rental
13 housing, factory-built housing, mobilehomes, housing for
14 agricultural employees, emergency shelters, and transitional
15 housing in order to meet the community's housing goals as
16 identified in subdivision (b).

17 (i) Where the inventory of sites, pursuant to paragraph (3) of
18 subdivision (a), does not identify adequate sites to accommodate
19 the need for groups of all household income levels pursuant to
20 Section 65584, the program shall provide for sufficient sites with
21 zoning that permits owner-occupied and rental multifamily
22 residential use by right, including density and development
23 standards that could accommodate and facilitate the feasibility of
24 housing for very low and low-income households.

25 (ii) Where the inventory of sites pursuant to paragraph (3) of
26 subdivision (a) does not identify adequate sites to accommodate
27 the need for farmworker housing, the program shall provide for
28 sufficient sites to meet the need with zoning that permits
29 farmworker housing use by right, including density and
30 development standards that could accommodate and facilitate the
31 feasibility of the development of farmworker housing for low- and
32 very low income households.

33 (B) For purposes of this paragraph, the phrase "use by right"
34 shall mean that the use does not require a conditional use permit
35 or a planned unit development permit, except when the proposed
36 project is a mixed-use project involving both commercial or
37 industrial uses and residential uses. Use by right for all rental
38 multifamily residential housing shall be provided in accordance
39 with subdivision (f) of Section 65589.5. The changes made to this

1 subparagraph by Chapter _____ of the Statutes of 2003 are
2 declaratory of existing law.

3 (C) The requirements of this subdivision regarding
4 identification of sites for farmworker housing shall apply
5 commencing with the next revision of housing elements required
6 by Section 65588 following the enactment of this subparagraph.

7 (2) Assist in the development of adequate housing to meet the
8 needs of low- and moderate-income households.

9 (3) Address and, where appropriate and legally possible,
10 remove governmental constraints to the maintenance,
11 improvement, and development of housing, including housing for
12 all income levels and housing for persons with disabilities. The
13 program shall remove constraints to, or provide reasonable
14 accommodations for housing designed for, intended for
15 occupancy by, or with supportive services for, persons with
16 disabilities.

17 (4) Conserve and improve the condition of the existing
18 affordable housing stock, which may include addressing ways to
19 mitigate the loss of dwelling units demolished by public or private
20 action.

21 (5) Promote housing opportunities for all persons regardless of
22 race, religion, sex, marital status, ancestry, national origin, color,
23 familial status, or disability.

24 (6) (A) Preserve for lower income households the assisted
25 housing developments identified pursuant to paragraph (8) of
26 subdivision (a). The program for preservation of the assisted
27 housing developments shall utilize, to the extent necessary, all
28 available federal, state, and local financing and subsidy programs
29 identified in paragraph (8) of subdivision (a), except where a
30 community has other urgent needs for which alternative funding
31 sources are not available. The program may include strategies that
32 involve local regulation and technical assistance.

33 (B) The program shall include an identification of the agencies
34 and officials responsible for the implementation of the various
35 actions and the means by which consistency will be achieved with
36 other general plan elements and community goals. The local
37 government shall make a diligent effort to achieve public
38 participation of all economic segments of the community in the
39 development of the housing element, and the program shall
40 describe this effort.

(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by July 1, 1992.

(e) Failure of the department to review and report its findings pursuant to Section 65585 to the local government between July 1, 1992, and the next periodic review and revision required by Section 65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to Part 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code.

SEC. 2. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) Any local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones. The ordinance may do any of the following:

(A) Designate areas within the jurisdiction of the local agency where second units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

(B) Impose standards on second units that include, but are not limited to, parking, height, setback, lot coverage, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(C) Provide that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. Nothing in this paragraph may be construed to require

1 a local government to adopt or amend an ordinance for the creation
2 of second units. A local agency may charge a fee to reimburse it
3 for costs that it incurs as a result of amendments to this paragraph
4 enacted during the 2001–02 and 2003–04 Regular Sessions of the
5 Legislature, including the costs of adopting or amending any
6 ordinance that provides for the creation of second units.

7 (b) (1) When a local agency that has not adopted an ordinance
8 governing second units in accordance with subdivision (a) or (c)
9 receives its first application on or after July 1, 1983, for a permit
10 pursuant to this subdivision, the local agency shall accept the
11 application and approve or disapprove the application
12 ministerially without discretionary review pursuant to this
13 subdivision unless it adopts an ordinance in accordance with
14 subdivision (a) or (c) within 120 days after receiving the
15 application. Notwithstanding Section 65901 or 65906, a local
16 agency may not require a variance or discretionary permit for the
17 creation of a second unit and shall approve an application for a
18 second unit that complies with all of the following:

19 (A) The unit is not intended for sale and may be rented.

20 (B) The lot is zoned for single-family or multifamily use.

21 (C) The lot contains an existing single-family dwelling.

22 (D) The second unit is either attached to the existing dwelling
23 and located within the living area of the existing dwelling or
24 detached from the existing dwelling and located on the same lot as
25 the existing dwelling.

26 (E) Requirements relating to height, setback, lot coverage,
27 architectural review, site plan review, fees, charges, and other
28 zoning requirements generally applicable to residential
29 construction in the zone in which the property is located.

30 (F) Local building code requirements which apply to detached
31 dwellings, as appropriate.

32 (G) Approval by the local health officer where a private sewage
33 disposal system is being used, if required.

34 (2) No other local ordinance, policy, or regulation shall be the
35 basis for the denial of a building permit or a use permit under this
36 subdivision.

37 (3) This subdivision establishes the maximum standards that
38 local agencies shall use to evaluate proposed second units on lots
39 zoned for residential use which contain an existing single-family

1 dwelling. No additional standards, other than those provided in
2 this subdivision or subdivision (a), shall be utilized or imposed.

3 (4) No changes in zoning ordinances or other ordinances or any
4 changes in the general plan shall be required to implement this
5 subdivision. Any local agency may amend its zoning ordinance or
6 general plan to incorporate the policies, procedures, or other
7 provisions applicable to the creation of second units if these
8 provisions are consistent with the limitations of this subdivision.

9 (5) A second unit which conforms to the requirements of this
10 subdivision shall not be considered to exceed the allowable density
11 for the lot upon which it is located, and shall be deemed to be a
12 residential use which is consistent with the existing general plan
13 and zoning designations for the lot. The second units shall not be
14 considered in the application of any local ordinance, policy, or
15 program to limit residential growth.

16 (c) (1) Local agencies shall permit second units in all
17 residential zones but may impose greater restrictions on second
18 units in a particular zone or zones than on second units in other
19 zones. No local agency shall adopt an ordinance that totally
20 precludes second units within single-family or multifamily zoned
21 areas unless the ordinance contains findings based on substantial
22 evidence acknowledging that the ordinance may limit housing
23 opportunities of the region and further contains findings based on
24 substantial evidence that specific adverse impacts on the public
25 health and safety, as defined in paragraph (2) of subdivision (d) of
26 Section 65589.5, that would result from allowing second units
27 within single-family and multifamily zoned areas justify adopting
28 the ordinance.

29 (2) No local agency may apply any standard for approval of
30 second units that is not objective or that has the effect of precluding
31 the construction of second units at affordable housing costs, as
32 defined in Section 50052.5 of the Health and Safety Code, unless
33 the city, county, or city and county makes a written finding, based
34 upon substantial evidence, that the waiver or reduction of the
35 standard or condition is either of the following:

36 (A) Is not required in order to provide for affordable housing
37 costs, as defined in Section 50052.5 of the Health and Safety Code.

38 (B) Would approval of second units that is not objective, that
39 does not constitute an appropriate standard as defined in Section
40 65913.1, or that has the effect of rendering the development not

financially feasible at market rate rents as defined in paragraph (3) of subdivision (g) of Section 65589.5, unless the city, county, or city and county makes a written finding, based upon substantial evidence, that the waiver or reduction of the standard or condition would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development ~~unaffordable to low- and moderate-income households~~ financially infeasible.

(3) No local agency may adopt an ordinance that does either of the following:

(A) Requires an applicant or occupant of a second unit or principal dwelling unit to be an owner-occupant, or his or her dependent, or a caregiver for the property owner or dependent.

(B) Restricts the rent or income of occupants of second units or that limits occupancy based on age, unless the rent or income restriction is mandated pursuant to a local program regulating rents or requiring a portion of new residential developments to consist of units with rent or income restrictions.

(4) Nothing in this section shall be construed to enlarge or diminish the authority of a city, county, or city and county to regulate rents or require a developer to construct housing with rent or income restrictions.

(5) *Nothing in this section shall prohibit a city, county, or city and county from regulating or prohibiting transient use of second units in which rent is charged and collected on a daily basis.*

(d) A local agency may establish minimum and maximum unit ~~size requirements for both attached and detached second units. No minimum or maximum size for a second unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings which does not permit at least an efficiency unit to be constructed in compliance with local development standards. In no case may the total area of floor space of an attached or detached second unit be more than 40 percent of the living area of the principal dwelling unit, nor more than 1,200 square feet nor less than 400 square feet. size requirements for both attached and detached second units except~~

1 *that (1) maximum size requirements shall permit a second unit with*
2 *a total floor area of at least 40 percent of the living area of the*
3 *principal dwelling or 1,200 square feet, and (2) minimum size*
4 *requirements shall not prohibit a unit meeting the minimum square*
5 *footage requirement for an efficiency unit as set forth in Section*
6 *17958.1.*

7 (e) Parking requirements for second units shall not exceed one
8 parking space per secondary unit or per every two bedrooms of the
9 ~~secondary unit. Covered parking may not be required. Offstreet,~~
10 ~~tandem, and onstreet parking shall be permitted. Upon request of~~
11 ~~secondary unit, whichever is greater. Covered parking may not be~~
12 ~~required. Off-street, tandem, and on-street parking shall be~~
13 ~~permitted under the following conditions:~~

14 (1) *Off-street parking shall be permitted in setback areas in*
15 *locations determined by the local agency.*

16 (2) *Tandem parking shall be permitted if the applicant for the*
17 *second unit agrees to permit tandem parking.*

18 (3) *On-street parking shall be permitted if the on-street parking*
19 *is permitted along the street frontage of the lot unless the local*
20 *agency makes a written finding, based on substantial evidence,*
21 *that specific topographical, fire, or life safety conditions would*
22 *result in a substantial, adverse impact on public health and safety*
23 *if on-street parking were allowed. Upon request of the applicant,*
24 *the city, county, or city and county shall also grant an additional*
25 *33 percent reduction in the parking standards or requirements*
26 *applicable to the secondary unit if the unit is located within*
27 *one-quarter mile of an existing rail transit station, a ferry terminal*
28 *served by either a bus or rail transit service, or the intersection of*
29 *two or more major bus routes with a frequency of service interval*
30 *of 15 minutes or less during the morning and afternoon peak*
31 *commute periods, provided that the reduction is not mandatory to*
32 *the extent it would result in less than one parking space per unit*
33 *for units with two or more bedrooms.*

34 (f) Fees charged for the construction of second units shall be
35 determined in accordance with Chapter 5 (commencing with
36 Section 66000).

37 (g) Except as provided in subdivision (d), this section does not
38 limit the authority of local agencies to adopt less restrictive
39 requirements for the creation of second units.

(h) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) or (c) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) “Living area,” means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) “Local agency” means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, “neighborhood” has the same meaning as set forth in Section 65589.5.

(4) “Second unit” means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. A second unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for second units.

SEC. 3. Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant proposes a housing development within the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units as prescribed in this chapter. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall either grant a density bonus and at least one of the concessions or incentives identified in subdivision (k), or provide other incentives or concessions of

1 equivalent financial value based upon the land cost per dwelling
2 unit, when the applicant for the housing development agrees or
3 proposes to construct at least any one of the following:

4 (1) Twenty percent of the total units of a housing development
5 for lower income households, as defined in Section 50079.5 of the
6 Health and Safety Code.

7 (2) Ten percent of the total units of a housing development for
8 very low income households, as defined in Section 50105 of the
9 Health and Safety Code.

10 (3) Fifty percent of the total dwelling units of a housing
11 development for qualifying residents, as defined in Section 51.3
12 of the Civil Code.

13 (4) Twenty percent of the total dwelling units in a
14 condominium project as defined in subdivision (f) of Section 1351
15 of the Civil Code, for persons and families of moderate income,
16 as defined in Section 50093 of the Health and Safety Code.

17 The city, county, or city and county shall grant the additional
18 concession or incentive required by this subdivision unless the
19 city, county, or city and county makes a written finding, based
20 upon substantial evidence, that the additional concession or
21 incentive is not required in order to provide for affordable housing
22 costs, as defined in Section 50052.5 of the Health and Safety Code,
23 or for rents for the targeted units to be set as specified in
24 subdivision (c).

25 (c) (1) An applicant shall agree to, and the city, county, or city
26 and county shall ensure, continued affordability of all lower
27 income density bonus units for 30 years or a longer period of time
28 if required by the construction or mortgage financing assistance
29 program, mortgage insurance program, or rental subsidy program.
30 Those units targeted for lower income households, as defined in
31 Section 50079.5 of the Health and Safety Code, shall be affordable
32 at a rent that does not exceed 30 percent of 60 percent of area
33 median income. Those units targeted for very low income
34 households, as defined in Section 50105 of the Health and Safety
35 Code, shall be affordable at a rent that does not exceed 30 percent
36 of 50 percent of area median income.

37 (2) An applicant shall agree to, and the city, county, or city and
38 county shall ensure, continued affordability of the
39 moderate-income units that are directly related to the receipt of the
40 density bonus for 10 years if the housing is in a condominium

project as defined in subdivision (f) of Section 1351 of the Civil Code.

(d) (1) Upon request of the applicant, the city, county, or city and county shall also grant a 25-percent reduction in the parking standards or requirements applicable to the proposed development, *provided that the reduction is not mandatory to the extent it would result in less than one parking space per unit for units with two or more bedrooms.*

(2) Upon request of the applicant, the city, county, or city and county shall grant a 33-percent reduction in the parking standards or requirements applicable to the proposed development in lieu of the reduction in paragraph (1) where the proposed development is located within one-quarter mile of an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods, *provided that the reduction is not mandatory to the extent it would result in less than one parking space per unit for units with two or more bedrooms.*

(e) An applicant may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(1) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

1 The applicant may initiate judicial proceedings if the city,
2 county, or city and county refuses to grant a requested density
3 bonus, incentive, or concession. If a court finds that the refusal to
4 grant a requested density bonus, incentive, or concession is in
5 violation of this section, the court shall award the plaintiff
6 reasonable attorney's fees and costs of suit. Nothing in this
7 subdivision shall be interpreted to require a local government to
8 grant an incentive or concession that has a specific, adverse
9 impact, as defined in paragraph (2) of subdivision (d) of Section
10 65589.5, upon health, safety, or the physical environment, and for
11 which there is no feasible method to satisfactorily mitigate or
12 avoid the specific adverse impact. Nothing in this subdivision shall
13 be interpreted to require a local government to grant an incentive
14 or concession that would have an adverse impact on any real
15 property that is listed in the California Register of Historical
16 Resources. The city, county, or city and county shall establish
17 procedures for carrying out this section, that shall include
18 legislative body approval of the means of compliance with this
19 section. The city, county, or city and county shall also establish
20 procedures for waiving or modifying development and zoning
21 standards that would otherwise inhibit the utilization of the density
22 bonus on specific sites. These procedures shall include, but not be
23 limited to, such items as minimum lot size, side yard setbacks, and
24 placement of public works improvements.

25 (f) In no case may a city, county, or city and county apply any
26 development standard that will have the effect of precluding the
27 construction of a development meeting the criteria of subdivision
28 (b) at the densities or with the concessions or incentives permitted
29 by this section. An applicant may submit to a city, county, or city
30 and county a proposal for the waiver or reduction of development
31 standards and may request a meeting with the city, county, or city
32 and county. If a court finds that the refusal to grant a waiver or
33 reduction of development standards is in violation of this section,
34 the court shall award the plaintiff reasonable attorney's fees and
35 costs of suit. Nothing in this subdivision shall be interpreted to
36 require a local government to waive or reduce development
37 standards if the waiver or reduction would have a specific, adverse
38 impact, as defined in paragraph (2) of subdivision (d) of Section
39 65589.5, upon health, safety, or the physical environment, and for
40 which there is no feasible method to satisfactorily mitigate or



1 avoid the specific adverse impact. Nothing in this subdivision shall
2 be interpreted to require a local government to waive or reduce
3 development standards that would have an adverse impact on any
4 real property that is listed in the California Register of Historical
5 Resources.

6 (g) The applicant shall show that the waiver or modification is
7 necessary to make the housing units economically feasible.

8 (h) (1) For the purposes of this chapter, except as provided in
9 paragraph (2), “density bonus” means a density increase of at least
10 25 percent, unless a lesser percentage is elected by the applicant,
11 over the otherwise maximum allowable residential density under
12 the applicable zoning ordinance and land use element of the
13 general plan as of the date of application by the applicant to the
14 city, county, or city and county. All density calculations resulting
15 in fractional units shall be rounded up to the next whole number.
16 The granting of a density bonus shall not be interpreted, in and of
17 itself, to require a general plan amendment, local coastal plan
18 amendment, zoning change, or other discretionary approval. The
19 density bonus shall not be included when determining the number
20 of housing units which is equal to 10, 20, or 50 percent of the total.
21 The density bonus shall apply to housing developments consisting
22 of five or more dwelling units.

23 (2) For the purposes of this chapter, if a development does not
24 meet the requirements of paragraph (1), (2), or (3) of subdivision
25 (b), but the applicant agrees or proposes to construct a
26 condominium project as defined in subdivision (f) of Section 1351
27 of the Civil Code, in which at least 20 percent of the total dwelling
28 units are reserved for persons and families of moderate income, as
29 defined in Section 50093 of the Health and Safety Code, a “density
30 bonus” of at least 10 percent shall be granted, unless a lesser
31 percentage is elected by the applicant, over the otherwise
32 maximum allowable residential density under the applicable
33 zoning ordinance and land use element of the general plan as of the
34 date of application by the applicant to the city, county, or city and
35 county. All density calculations resulting in fractional units shall
36 be rounded up to the next whole number. The granting of a density
37 bonus shall not be interpreted, in and of itself, to require a general
38 plan amendment, local coastal plan amendment, zoning change, or
39 other discretionary approval. The density bonus shall not be
40 included when determining the number of housing units which is

1 equal to 20 percent of the total. The density bonus shall apply to
2 housing developments consisting of five or more dwelling units.

3 (i) “Housing development,” as used in this section, means one
4 or more groups of projects for residential units constructed in the
5 planned development of a city, county, or city and county. For the
6 purposes of this section, “housing development” also includes
7 either (1) a project to substantially rehabilitate and convert an
8 existing commercial building to residential use, or (2) the
9 substantial rehabilitation of an existing multifamily dwelling, as
10 defined in subdivision (d) of Section 65863.4, where the result of
11 the rehabilitation would be a net increase in available residential
12 units. For the purpose of calculating a density bonus, the
13 residential units do not have to be based upon individual
14 subdivision maps or parcels. The density bonus shall be permitted
15 in geographic areas of the housing development other than the
16 areas where the units for the lower income households are located.

17 (j) The granting of a concession or incentive shall not be
18 interpreted, in and of itself, to require a general plan amendment,
19 local coastal plan amendment, zoning change, or other
20 discretionary approval. This provision is declaratory of existing
21 law.

22 (k) For the purposes of this chapter, concession or incentive
23 means any of the following:

24 (1) A reduction in site development standards or a modification
25 of zoning code requirements or architectural design requirements
26 that exceed the minimum building standards approved by the
27 California Building Standards Commission as provided in Part 2.5
28 (commencing with Section 18901) of Division 13 of the Health
29 and Safety Code, including, but not limited to, a reduction in
30 setback and square footage requirements and in the ratio of
31 vehicular parking spaces that would otherwise be required.

32 (2) Approval of mixed use zoning in conjunction with the
33 housing project if commercial, office, industrial, or other land uses
34 will reduce the cost of the housing development and if the
35 commercial, office, industrial, or other land uses are compatible
36 with the housing project and the existing or planned development
37 in the area where the proposed housing project will be located.

38 (3) Other regulatory incentives or concessions proposed by the
39 developer or the city, county, or city and county that result in
40 identifiable and actual cost reductions.



This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(l) If an applicant agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, city and county, or county may, at its discretion, grant more than one density bonus.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) A local agency may charge a fee to reimburse it for costs it incurs as a result of amendments to this section enacted during the 2001–02 and 2003–04 Regular Sessions of the Legislature.

(o) For purposes of this section, the following definitions shall apply:

(1) “Development standard” includes site or construction standards or conditions that apply to residential development, whether adopted by ordinance, general plan element, specific plan, charter amendment, or other local law, policy, resolution, or regulation.

(2) “Maximum allowable residential density” means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

SEC. 4. Section 65917.1 is added to the Government Code, to read:

65917.1. (a) Multifamily and single-family residential use is a permitted use on any parcel zoned and developed for primary or secondary education. The residential density permitted on such a parcel is the greatest multifamily residential density permitted on any parcel within 300 feet plus any density bonus mandated by Section 65915. If there is no multifamily residential use permitted within 300 feet, the permitted residential density on the parcel being developed for primary or secondary education *and residential uses* is the greatest multifamily residential density on

1 the nearest parcel zoned for multifamily residential use plus any
2 density bonus mandated by Section 65915.

3 *(b) Nothing in this section shall be construed to enlarge or*
4 *diminish the authority of a city, county, or city and county with*
5 *regard to any parcel zoned or developed for primary or secondary*
6 *education, except that the local government shall be required to*
7 *permit the residential use and densities provided for in this section*
8 *on these parcels.*

9 SEC. 5. Notwithstanding Section 17610 of the Government
10 Code, if the Commission on State Mandates determines that this
11 act contains costs mandated by the state, reimbursement to local
12 agencies and school districts for those costs shall be made pursuant
13 to Part 7 (commencing with Section 17500) of Division 4 of Title
14 2 of the Government Code. If the statewide cost of the claim for
15 reimbursement does not exceed one million dollars (\$1,000,000),
16 reimbursement shall be made from the State Mandates Claims
17 Fund.

